

Table 1

**Summary of Public Comment on Proposed Amendment of Sections 150.06 and 150.16, Title 14, CCR
Re: Permits to Commercially Take Deeper Nearshore Fish Species**

Speaker/ Organization	Comment Format	Summary of Comment	Department Response
Gerry Richter, federal groundfish permittee, Goleta, CA	letter dated 22 Jan 2003	C-1. Supportive of instituting a 100 pound minimum landings requirement over the 1994-1999 window period, but a fraction of "unspecified rockfish" should count in assessing if an individual qualifies for a permit.	Accept with qualification. It is impossible to determine whether an individual's "unspecified rockfish" catch as documented on landing receipts should instead have been labeled as deeper nearshore species. Port sampling information reveals that overall, during the 1994-1999 window period, only approximately 3.5 percent of the catch of unspecified rockfish was composed of species for which the Deeper Nearshore Species Permit will be required. The vast majority (over 95 percent) of the 20 million pounds of unspecified rockfish landed during this window period was composed of species of shelf and slope rockfish. Other information that might be gained from reviewing an individual's complete catch history in all fisheries may reveal what if any fraction of this catch could reasonably be considered to be nearshore fish stocks, although such a determination can only be properly made during the permit application process. This process has recently been used for consideration in similar cases regarding issuance of existing nearshore fishery permits.
Gerry Richter, federal groundfish permittee, Goleta, CA	letter dated 22 Jan 2003	C-2. Set the permit fee at \$125, since allowable harvest levels for these species are so low.	Accept. The Department is recommending this fee level, as it would be consistent with the fee for the first Nearshore Fishery Permit prior to implementation of a restricted access program. Furthermore, a higher fee may be substantially out of line with fees for other commercial fishery permits in terms of the potential revenue which may be derived from the sale of the catch relative to the price of the permit.

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Gerry Richter, federal groundfish permittee, Goleta, CA	letter dated 22 Jan 2003	C-3. Change the ending date of the qualifying window period from December 31, 1999 to October 20, 2000 to be consistent with the established control date for a gear endorsement program	Reject. The Commission established a gear endorsement control date of October 20, 2000 for the purpose of developing a future gear endorsement program for the deeper nearshore fishery. This differs from the control date for participation of December 31, 1999. The future criteria for issuance of gear endorsements in a restricted access program for these species would be premised upon the use of the gear endorsement control date, as was the case in the recently adopted criteria for issuance of shallow nearshore fishery permits. The fact that two different control dates for these species exist (one for participation and one for gear endorsement) is not problematic, and allows for future participation criteria to be more restrictive than that for gear endorsement.
Brian Williamson, commercial nearshore fisherman, Arroyo Grande, CA	letter dated 27 Jan 2003	C-4. Change the control date to May 2002 because the date of December 31 doesn't allow for newer fishery participants.	Reject. The control date is not being considered in this regulatory action. In May of 2002, the Commission selected a control date for participation in this sector of the nearshore fishery of December 31, 1999. This action notified current participants and those considering investing for future opportunities of the Commission's intention to limit future participation in this fishery based on a measure of prior participation. In the future, newer fishery participants who are excluded at this stage of the permitting process may have an opportunity to purchase a transferable permit.
Brian Williamson, commercial nearshore fisherman, Arroyo Grande, CA	letter dated 27 Jan 2003	C-5. Adopt zero pounds as the required level of prior participation during the window period 1994-1999.	Reject. While this is within the range of options presented to the Commission for consideration, this would not restrict the number of fishery participants from current and historic levels. The selected window period was designed to allow future opportunity only to those with prior participation during that time period, as there has been substantial cutbacks in other nearshore and shelf rockfish fisheries, and individuals displaced from those fisheries will continue to seek opportunities in fisheries that remain open-access.
Kenyon Hensel, commercial nearshore fisherman, Crescent City, CA	letter dated 27 Jan 2003	C-6. Criteria for the proposed Deeper Nearshore Species Permit does not have a qualifier in the northern area for recent participation, and without this, people who have left the fishery since the late 90's will qualify, and purchase a permit even though they are currently not active in this component of the fishery. In order to keep this permit active, these fishermen will make an effort to make catches now in order to meet future renewal requirements.	Accept in part. While Mr. Hensel's concerns are valid, the intention of this regulatory action is to establish a permit requirement for these species with or without some minor level of prior participation required for initial issuance. Consistent with the newly-adopted restricted access program for shallow nearshore species, it is possible that future criteria will include regional components, as well as requirements that would include both current and past participation in the fishery. Also see response to C-7.

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Kenyon Hensel, commercial nearshore fisherman, Crescent City, CA	letter dated 27 Jan 2003	C-7. Don't make a "second cut" in the issuance of these permits next year, as it give people a false expectation that they can remain in the fishery. Instead, add additional qualifying criteria to the permit right now.	Reject. The goal of this regulatory action is to establish a permit requirement that will prevent any new participants from taking part in the fishery, while not making an immediate determination as to what level of historic participation was adequate to earn future access rights in this fishery. Additional constituent input and data analysis are needed before such requirements can be adequately considered. There is no scheduled date as to when such a "second cut" in the level of participants may be considered by the Commission. In issuing nearshore fishery permits, the Department has been clear that the permit entitles an individual to fish for the duration of the season, and that holding a permit in one year does not automatically qualify an individual to renew it the following year, as the Commission may consider adopting additional minimum participation requirements.
Ky Russell, Institute for Fisheries Resources	letter dated 29 Jan 2003	C-8. There does not seem to have been any opportunity for individuals to comment on this item, since the California Regulatory Notice Register notice only lists the February 7, 2003 adoption meeting as an opportunity to provide testimony to the Commission.	Reject. The notice for this regulatory action published in the California Regulatory Notice Register provides for a 45-day public comment period. Any individual is welcome to submit comments to the Commission in writing during this comment period. While the Commission often will schedule a discussion hearing at a scheduled meeting in addition to the adoption hearing, there is no requirement to do so under the Administrative Procedures Act.
Tim Athens, commercial nearshore fisherman, Oxnard, CA	letter dated 23 Jan 2003	C-9. The federal sort group requirement for minor nearshore rockfish did not start until 2000, yet the window period for consideration is 1994-1999.	See response to C-15.
Tim Athens, commercial nearshore fisherman, Oxnard, CA	letter dated 23 Jan 2003	C-10. Include all landings from the "rockfish unspecified" category and raise the minimum landings requirement to 2000-5000 pounds or more.	Accept with qualification. Given the available port sampling information, it cannot reasonably be assumed that 2000-5000 pounds of "rockfish unspecified" equates to a minimum of 200 pounds of deeper nearshore species during this time period. However, a detailed review of an individual's catch history during the permit application process would likely reveal if such a claim could be considered credible. Also see response to C-1.
Tim Athens, commercial nearshore fisherman, Oxnard, CA	letter dated 23 Jan 2003	Repeat of C-2	

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Chris Hoefflinger, commercial nearshore fisherman, Newbury Park, CA	letter dated 27 Jan 2003	C-11. Optimum Yield (OY) calculations, allocation calculations, and restricted access qualifying criteria are built on questionable landing receipt data.	Reject. The Department recognizes that some fraction of deeper nearshore species catches were coded to other group categories on landing receipts during the 1994-1999 window period. Based on historic port sampling information which provides species composition information for these group categories, in calculating OYs and allocations, additional "credit" was given for the volume of deeper nearshore species that could be assumed were taken during the window period, and were grouped on fish tickets as an aggregate with other species instead of being coded to the actual species. While this approach can be used to provide a better estimate of the total statewide catches of these species during the window period, it cannot be used to re-create a particular individual's catch history for purposes of meeting restricted access qualifying criteria.
Tom Hafer, commercial nearshore fisherman, Atascadero, CA	letter dated 1 Feb 2003	C-12. New fish tickets came out in 1999, and prior to that date, most deeper nearshore species were coded to unspecified rockfish or gopher cod. Therefore, anyone with this catch history should qualify.	Reject. See responses to C-1 and C-10.
LeRoy Reiner, F/V Bluefin, San Jose, CA	letter dated 5 Feb 2003	C-13. The window period for landings history should be January 1, 1994 through December 31, 2000, consistent with the first window period used for qualifying for a shallow nearshore fishery permit when 100 pounds of those species was required for permit renewal for the 2002-03 season.	Reject. While the Department did use a different window in the "first cut" process for the shallow nearshore permit, the Commission recognized the potential need to restrict future access to the deeper component of the fishery last year, and adopted a control date for participation in the fishery of December 31, 1999. This date is the same as the control date selected for the shallow nearshore permit, which put fishery participants on notice not to make new or additional investments in the deeper fishery without some measure of prior participation. While the shallow and deep permit processes are similar, the use of the 1994-2000 window period for the shallow permit was only intended to serve as a one-year placeholder until additional criteria could be developed. That has since happened, and permit issuance criteria is now structured around a window period of 1994- 1999.
Waldo and Wesley Taylor, commercial nearshore fishermen, Crescent City, CA	letter dated 31 January 2003	Repeat of C-2.	

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Chris Hoefflinger, commercial nearshore fisherman, Newbury Park, CA	letter dated 1 Feb 2003; verbal testimony, adoption hearing 7 February 2003	C-14. It is erroneous to think that species-specific commercial landings data for the eight deeper nearshore species can be used to establish minimum participation requirements, given that none of these species were represented on southern-area landing receipts.	Reject. See response to C-15 and C-11.
Chris Hoefflinger, commercial nearshore fisherman, Newbury Park, CA	letter dated 1 Feb 2003; verbal testimony, adoption hearing 7 February 2003	C-15. Until 2000, the Pacific Fishery Management Council (PFMC) managed the "Sebastes Complex" of 34 species of rockfish, which included the deeper nearshore species. These 34 species were managed under a single aggregate optimum yield, and cumulative trip limits were established for the Sebastes group complex. As a result, catches were recorded in several non-specific rockfish group categories. DFG fish tickets provided for such groupings, and were printed in accordance with statutory provisions in Section 8043, which says that names recorded shall be those in common usage, which would include the commonly used "groups" of rockfish. If the Department's intention was for fishermen to code these rockfish to species, and be more specific than the Federal requirements, then fishermen wouldn't have been given group rockfish categories by DFG on the ticket.	Accept with qualification. Sections 8043 and 8045 of the Fish and Game Code which pertain to landing receipts state that the accurate weight of the species of fish shall be recorded. These statutory provisions were in effect for the duration of the 1994-1999 window period, and would apply when landing fish into California ports, even if Federal requirements were more liberal and allowed for grouping of fish. The state of California has the right to adopt groundfish laws that are more restrictive, so long as they are not inconsistent with Federal law. Furthermore, fishermen applied their signature to the landing receipt, indicating the catch information was correct on the ticket, according to the state's statutory provisions. However, the Department and Commission may consider group coding information during the permit application process, as described in more detail in the response to C-1.
Chris Hoefflinger, commercial nearshore fisherman, Newbury Park, CA	letter dated 1 Feb 2003	C-16. Set the fee for a Deeper Nearshore Species Permit at \$100 for individuals who do not currently hold a Neashore Fishery Permit; and have no fee assessed for the deeper permit on those who do. This fee range provided is not in line with the available opportunities, given restrictive OY levels.	Reject. Once this regulatory action establishes a Deeper Nearshore Species permit, the Department will issue two nearshore permits which authorize commercial take of two different nearshore species groups. Thus, costs for one permit are not intended to cover costs for the other. Fees for each nearshore permit are set by the Commission after considering several factors, including the costs for monitoring and management of the fishery, allowable catch levels, cost of comparable permits, the statewide value of the fishery and other applicable commercial license fees which are incurred (endorsements, vessel/operator fees, etc).

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Jimmy Smith, Chair Humboldt County Board of Supervisors	letter dated 28 January, 2003	C-17. Consider the cumulative effects of nearshore regulatory actions, and the economic impact to commercial fishing communities which have been substantially downsized. A fee of a magnitude of \$1200 would have a substantial negative impact.	Agree in part. The Commission's Restricted Access Policy calls for matching the number of commercial fishery participants to the available resource. Given that there is a sharp decline in allowable catch levels for deeper nearshore species, a future restricted access program is a way to ensure a future fishery for the participants that are most reliant upon it. Regarding fees, see response to C-2.
Bill James, commercial nearshore fisherman, Avila Beach	verbal testimony, adoption hearing 7 February 2003	C -18. Changes to the nearshore fishery are coming too quickly; this new permit is going forth with little opportunity for comment from fishermen other than those present at the meeting.	Reject. In December 2002, the Commission requested the Department proceed with development of regulations to require this permit, following the Commission's adoption of control dates for the deeper nearshore fishery in May of 2002. The regulatory action to require a permit now, rather than later, was prompted by three substantial concerns for this fishery that were initiated in 2003. First, the Commission took action in December 2002 to establish a nearshore fishery restricted access program for the shallow component of the fishery that reduces the number of participants in that fishery from over 1100 in 1999 to approximately 175 individuals beginning in April 2003. These displaced participants are likely to seek opportunities in other open-access fisheries, which would include the fishery for deeper nearshore rockfish species unless a permit requirement is implemented. Second, beginning in 2003, based on a need to minimize impact on overfished populations, the PFMC halted all directed rockfish fisheries in shelf waters for the entire year south of Cape Mendocino, which will prompt a shift in fishing effort elsewhere. Third, in 2003, the PFMC established a specific OY for these deeper nearshore rockfish species, split 84/16 sport to commercial for areas south of Cape Mendocino. The resulting commercial OY levels statewide are approximately one-quarter or less of recent catch levels, creating a situation where too few fish are available for too many fishery participants.
Bill James, commercial nearshore fisherman, Avila Beach	verbal testimony, adoption hearing 7 February 2003	C-19. The original nearshore permit fee of \$125 was inclusive of the shallow and the deep species; now the cost is \$500 for the shallow; plus applicable gear endorsements. An added cost of \$125 for the deeper permit makes fishing in the nearshore too expensive. Repeated comments C -1, C -11, and C - 12.	Reject. The original nearshore fishery requirement is, and was, only required for the take of shallow nearshore rockfish, California sheephead, California scorpionfish, cabezon and greenlings. No permit was needed to take the deeper nearshore species. Also see response to C-16.

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Jim Basseler, Salmon Trollers Marketing Association	verbal testimony, adoption hearing 7 February 2003	C-20. The Department has done a fairly good job developing the criteria given the deficiencies data, provided exceptions are made for unspecified rockfish.	Accept.
Jim Basseler, Salmon Trollers Marketing Association	verbal testimony, adoption hearing 7 February 2003	C-21. Supports increases to landings taxes instead of increases to permit fees, since that allows you to "pay as you go." Since these species are worth less, and less poundage available under trip limits; the permit fee should be lower.	Accept in part. The Commission does not have authority to set commercial landings taxes. Changes to these laws would need to be initiated by the Legislature. The Commission adopted a fee of \$125 for the deeper nearshore species permit, substantially less than the \$500 fee for the shallow nearshore species permit.
Guy Grundemeier, commercial nearshore fisherman, Port San Luis	verbal testimony, adoption hearing 7 February 2003	C-22. The number of participants in the shallow nearshore fishery has gone from 1200 fishermen to 174 fishermen; but the Department also took allowable catch down to 10% of what it was previously, and increased the permit fee 500%. Before 1999 fishermen didn't record catch to species level, and therefore, we aren't given credit for those catches made and coded to something else. To allow 10% of the harvest coupled with a 500% increase in the permit fee doesn't make sense from a business point of view.	Reject. The Commission and PFMC reduced overall allowable catches for all nearshore species by 50 percent, and included estimates of catch that were coded to other group categories on landing receipts during the 1994-1999 window period.
Guy Grundemeier, commercial nearshore fisherman, Port San Luis	verbal testimony, adoption hearing 7 February 2003	C-23. Two nearshore permits will increase the bycatch.	Accept in part. With establishment of any permit requirement, some bycatch will occur by individuals who incidentally take a species that cannot be landed without a permit. However, of the 161 anticipated permittees in the shallow nearshore restricted access fishery, over two-thirds of them meet the initial criteria for purchase of a deeper nearshore species permit. Hence, bycatch from that sector of the nearshore fishery on deeper nearshore species will be minimal. Additionally, having a permit requirement for the deeper species will aid in reducing bycatch on the shallow nearshore species, as fewer people will be allowed to target the deeper nearshore species, since open-access to this fishery will be eliminated. As a result, there should be less incidence of taking the shallow species incidental to the deeper fishery without being able to retain them, although this problem will not be eliminated with this regulatory action. With both the shallow and deeper nearshore components of the fishery under permit requirements, there are few other bottom-dwelling nearshore commercial fisheries to which the open-access effort could shift, causing an overall reduction in bycatch.